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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of CLEMENS and DINA STEINER.	
CLEMENS STEINER, Appellant, v. DINA MARIE STEINER, Respondent.	E067796 (Super.Ct.No. FAMRS904014) OPINION

APPEAL from the Superior Court of San Bernardino County. Janet M. Frangie, Judge. Affirmed.

Holstein, Taylor and Unitt and Brian C. Unitt for Appellant.

Rancho Family Law Group and Jonathon A. Zitney for Respondent.

Appellant Clemens Steiner (Husband) appeals from the dissolution of marriage from respondent Dina Marie Steiner (Wife)[1]. Husband only disputes the adjudication of the real property located on Stonecreek Place in Chino Hills (Stonecreek Property). Husband, who is Austrian, and Wife were married on August 13, 2005. Prior to their marriage, Wife was the sole owner of the Stonecreek Property, which was encumbered by a loan from Washington Mutual bank. Wife gifted one-half interest in the Stonecreek Property to Husband (transfer deed) before they were married based on her reliance on a promise by Husband that he would grant to her a one-half interest in all of his assets. After they were married, Husband insisted that they obtain a loan in Austria to pay off the Washington Mutual loan. Husband obtained a loan from the Raiffeisenlandesbank Oberosterreich Bank (RLB) by forging Wife's signature and paid off the mortgage for the Stonecreek Property. Wife was aware that the loan was paid in full but was unaware of the origination of the funds. Wife and Husband separated in 2008.

After a court trial, the trial court awarded the Stonecreek Property to Wife as her sole property finding that Husband fraudulently induced her to sign the transfer deed; that the RLB loan was not shown to have been agreed to by Wife; and the RLB loan was not secured by the Stonecreek Property. However, the trial court found that to the extent the RLB loan was valid (a determination it could not make based on RLB not being added as a party) it was a community property debt. The trial court did not address the issue of Husband's pro tanto interest in the Stonecreek Property under *In re Marriage of Moore*

[1] Respondent is also referred to in the record as Dina Marie Schon.

(1980) 28 Cal.3d 366 and *In re Marriage of Marsden* (1982) 130 Cal.App.426 (hereinafter, *Moore/Marsden*) for payment of the Washington Mutual loan raised belatedly by Husband after the trial court determined the transfer deed was invalid.

Husband's sole contention on appeal is that the trial court erred by failing to compute his pro tanto interest in the Stonecreek Property pursuant to *Moore/Marsden*.

FACTUAL AND PROCEDURAL HISTORY

A. PRETRIAL FILINGS

The Petition for Dissolution of Marriage was filed by Husband on December 15, 2009.

On August 28, 2015, Husband filed a statement of the case and issues for trial. Husband and Wife were married on August 13, 2005, and separated in September 2008. They had two children born in 2005 and 2007. Husband listed the issues for trial on the Stonecreek Property as follows: (1) "Loan—The issue before the court is the validity of a loan by [RLB] for 715,543.71 [euros] that was used to pay off an existing loan from Washington Mutual." Husband also sought half the fair market rent of the Stonecreek Property, credits for paying the interest for the RLB loan, and for the Stonecreek Property to be sold to pay off the RLB loan. Child custody and visitation were bifurcated.

Wife submitted a memorandum of points and authorities prior to trial in regards to the characterization of the Stonecreek Property. She argued the transfer deed was fraudulent because it was obtained based on "undue influence."

Husband filed a trial brief and did not mention a calculation under *Moore/Marsden*. Husband noted that an issue at trial was the validity of the loan with

RLB for 715,543.71 euros to pay off the existing loan on the Stonecreek Property from Washington Mutual. The parties submitted a joint exhibit list on October 13, 2015. It did not include any information in order to calculate any interest under *Moore/Marsden*.

Just prior to trial, Husband filed a reply to a trial brief filed by Wife regarding characterization of the Stonecreek Property. For the first time, Husband noted that there were several ways to divide the Stonecreek Property including using the method in *Moore/Marsden*.

B. TRIAL[2]

Trial took place between October 19, 2015, and November 12, 2015.

Husband was a resident of Austria. He and Wife married on August 13, 2005, and separated in June 2008. He was employed by Tiger Coatings Management. Husband gave Wife $170,000 prior to their marriage for various items including her credit card debt. On November 26, 2004, Wife and Husband signed the transfer deed giving Husband one-half interest in the Stonecreek Property, which was owned exclusively by Wife.

In November 2006, Husband started looking into a loan refinance for the Stonecreek Property based on Wife's representation that the loan payment on the mortgage from Washington Mutual, which was only in Wife's name, was increasing to $9,000 each month. Husband reached an agreement with RLB to borrow money and

[2] We only provide those facts pertinent to the RLB loan and Stonecreek Property.

signed an agreement with the bank. Husband insisted there were RLB loan documents, in German, signed by both him and Wife agreeing to the loan.[3]

Husband represented that the signature on the loan documents belonged to Wife. The amount of the loan was 715,000 euros. Husband represented that the purpose of the loan was to pay off the Washington Mutual loan. Husband testified that RLB paid the money to Washington Mutual. He made payments on the RLB loan totaling 132,000 euros between January 2007 and the time of trial.[4] Wife had made no payments on the RLB loan.

Husband believed Wife only transferred the deed to him so he would pay the debt on the house, which he felt was fraudulent and deceptive. Husband wanted Wife to pay half of the RLB loan. Husband admitted that there was no documentation tying the RLB loan to the Stonecreek Property; RLB had no right to foreclose on the Stonecreek Property. Husband admitted he made no payments on the RLB loan between 2009 and 2013 because of other financial obligations. RLB took no action against the Stonecreek Property during this period of non-payment.

Husband acknowledged the RLB contract was entitled "Offer to complete a loan contract." Husband insisted it was the actual loan contract. It was not a "contract proposal" but rather an actual loan. No other documentation was required by RLB. The acceptance of the offer was RLB wiring money to Washington Mutual, which ratified the

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[3] This loan document was admitted as an exhibit but the parties have not transmitted any of the exhibits to this court.

[4] Husband also stated he had paid 144,000 euros on the RLB loan since separation.

proposal as the contract. He insisted the signature on the contract belonged to Wife but acknowledged it had not been notarized. Wife had Husband sign the contract and he took it to the bank. No one at RLB verified her signature in person.

Husband insisted the RLB loan was obtained during the marriage and was community debt. Whether the RLB loan was valid or not, Husband wanted Wife to pay her share. In December 2006, Wife was given notice that the Washington Mutual loan was paid off in full.

Wife admitted she signed the transfer deed giving half of the Stonecreek Property to Husband in November 2004. Wife estimated the value of the home was between 1.4 and 1.6 million at the time. The Washington Mutual loan was approximately $800,000. In December 2006, the loan balance was $916,000. Wife testified that the Washington Mutual loan was paid off at the end of 2006 but it was a mystery to her "[t]he means and by whom, I've still not been able to ever figure that out." She was unable to get an answer from Washington Mutual who paid the loan. Husband told her that he paid off the loan but not how; he did tell her he obtained a loan. Wife denied ever signing any loan documents with RLB. RLB had refused to provide her any information about the loan. The signature on the RLB paperwork had to have been photoshopped; Husband had admitted to Wife that he had photoshopped her signature on another document.

In June 2009, RLB contacted Wife about the loan, demanding payment. She responded she was unaware of the loan and they never contacted her again.

Husband told Wife's brother that he planned to get a loan in Austria to pay off the Washington Mutual loan because of the strength of the euro to the dollar. Husband had never provided any original RLB loan documents to Wife when asked.

Wife's brother, John Gioeli, went to RLB on Wife's behalf in 2009 in response to letters she received about being in default on the loan. Bank employees who met with him were very nervous. They refused to give him any documentation on the RLB loan.

Husband was asked what he thought the trial court should decide as to the Stonecreek Property. He responded, "[Wife] would refinance it, and with the refinancing the RLB loan can be paid back. And I give her back my 50 percent of the house. And everything is as it was before November 26 of 2004."

Wife was asked what should be done with the Stonecreek Property. She wanted Husband's name off of the deed. She wanted the home "unencumbered." She was unclear if she owed on the RLB loan. She was not sure it was used to pay off the Washington Mutual loan.

Evidence was also presented that Wife refinanced the Stonecreek Property effective July 1, 2004; the payments each month were $2,974 but it had an adjustable rate mortgage. The payment increased to $3,197 in July 2005. Payments on the RLB loan were approximately $5,000 per month.

Reinhold Freiseisen worked with Husband at Tiger Coatings. He was the chief financial officer. Husband was the chief executive officer of Tiger Coatings and several other Tiger affiliates in other countries. In 2006, Husband approached Freiseisen and asked him to help him with a loan. Freiseisen had discussions with RLB bank about

arranging the loan. He provided income from Husband. An appraisal of the "real estate property" was provided. Freiseisen never directly spoke with Wife. Freiseisen received a document from the bank regarding the loan and gave it to Husband. He did not know how it got signed but Husband returned it to him signed. Freiseisen had a copy of Wife's passport in his files. He obtained it from Husband. He sent a copy of the passport to RLB. He also received two letters from Washington Mutual bank from Husband. The letters stated the amount of the outstanding loan and where RLB was to wire the funds.

Freiseisen stated it was a common practice in Austria not to provide a formal acceptance letter of a loan. The loan was accepted by RLB because it sent out the proceeds. Freiseisen never had direct contact with Wife in 2006 regarding the RLB loan. The bank was given Wife's signature card and copy of passport but those were obtained from Husband. There was no collateral for the RLB loan. He claimed the loan amount was 715,000 euros. Freiseisen had seen a wire transfer from RLB to Washington Mutual.

C. PROPOSED TENTATIVE STATEMENT OF DECISION SUBMITTED BY HUSBAND

On January 22, 2016, after the conclusion of evidence, Husband submitted the proposed statement of decision. It provided that the trial court should determine that the RLB loan paid off the Washington Mutual loan in full on December 19, 2006. Moreover, the transfer deed granting him one-half interest in the Stonecreek Property was valid. There was no mention of a *Moore/Marsden* calculation.

Wife submitted a proposed statement of decision. As to the Stonecreek Property, the Washington Mutual loan was paid off in 2006 but Wife never executed the loan

document and was not aware of the loan transaction. The trial court should issue no order as to whether the loan existed as RLB was not a party and no valid loan documents were presented to the trial court. Further, the transfer deed to Husband was not valid as it was induced by fraud. Husband should be ordered to file a quitclaim deed returning his one-half interest to Wife. The statement of decision should include language as to the RLB loan as follows: "If at some point in the future it is determined that an enforceable loan does exist, the Court certainly retains jurisdiction over that issue." Wife did not have to reimburse or pay anything to Husband as it related to the purported loan.

D. ORAL ARGUMENT

Oral argument was heard on January 29, 2016. Husband's counsel argued that it was fair to put Husband back to where the parties were at the beginning of their relationship. He should get paid back for the RLB loan. Husband's counsel argued that the RLB was community property debt. Although there was no deed of trust on the Stonecreek Property securing the RLB loan, RLB could try to put an enforceable lien against the Stonecreek Property for payment of the debt. Husband's counsel wanted Wife to pay the entire RLB loan and keep the Stonecreek Property. Husband suggested that Wife would have to either refinance or sell the Stonecreek Property to pay the RLB loan.

For the first time, Husband's counsel stated, "From the date of marriage forward, whatever the community payments were, requires a payment of or indicates a *Moore/Marsden* interest." The trial court responded, "Why would there be a *Moore/Marsden* interest because it would be their joint interest?" Husband's counsel

responded that it was from the date of marriage forward. The community acquired an interest regardless of the deed. The trial court stated, "But who cares, because it's just the two of them. [¶] . . . [¶] . . . So who cares about *Moore/Marsden*[?]" Husband's counsel responded, "I'm using it as an example as to why the community has an interest. I'm not saying do the *Moore/Marsden* calculation . . . . [¶] . . . [¶] . . . That will even complicate this even beyond . . . ." The trial court again stated, "It wouldn't make any difference because there aren't any other parties. It's just the two of them." Husband's counsel responded, "Yes."

Husband's counsel then argued as to paying off the Washington Mutual loan that, "Well, any time the community pays off any kind of separate obligation, it's entitled to be reimbursed. The *Moore/Marsden* loan." Wife's counsel disagreed. The trial court reiterated it could make no ruling as to the right of RLB to collect the loan. Husband's counsel stated simply that the RLB loan was community debt.

Wife's counsel argued the RLB loan was not for the benefit of the Stonecreek Property. RLB had no way to enforce the loan in the United States. Further, it was questionable that the loan was valid. Wife's counsel also argued that the deed was obtained by fraud. After the marriage there would be a *Moore/Marsden* issue but it was not applicable because there was no valid loan. Wife had no obligation to pay off an invalid debt.

Husband's counsel responded that there was a written loan agreement and it was valid. Wife was unjustly enriched by receiving the Stonecreek Property free and clear of

any encumbrance. Husband was harmed by paying on a loan and getting nothing in return.

E. STATEMENT OF DECISION

On June 29, 2016, the trial court submitted a tentative decision, which has not been made part of the record. On July 31, 2016, Husband objected to the tentative decision, which had apparently granted the Stonecreek Property to Wife as her sole property by invalidating the transfer deed but found her responsible for one-half of the RLB loan if it was valid. Husband argued as follows: "The principles established in the *Marriage of Moore* (1980) 28 C3d 366, and the *Marriage of Marsden* (1982) 130CA 3d 426 require that equity be done. Here the court found that the RLB loan is a community debt. The funds from that same community debt were used to retire the Respondent's separate property debt to Washington Mutual. Following the principles of *Moore* and *Marsden,* the community acquired a pro tanto interest in the Chino Hills property. [¶] The Court has in evidence the amount of the Washington Mutual loan paid by the RLB loan, which is the basis to ascertain the community's pro tanto interest in the Chino Hills property." Husband stated that if the trial court decided to award the Stonecreek Property to Wife, she would be responsible for the entirety of the RLB loan. In the alternative, he should be awarded his pro tanto interest.

The final Statement of Decision was filed on October 21, 2016. The decision began, " 'Oh, what a tangled web we weave when first we practice [*sic*] to deceive.' " (Fn. omitted.) The trial court found that Husband and Wife were married on August 13, 2005, and were separated on August 28, 2008. Child custody and visitation were

bifurcated and were awaiting trial. The trial court found that the "overall credibility" of Husband was "called into question" by the court. The trial court's rulings took into account this lack of credibility.

As for the transfer deed from Wife to place the Stonecreek Property in both her and Husband's names, executed prior to their marriage, such transfer was fraudulent. Wife made this transfer with the understanding that Husband would transfer one-half interest in all of his assets to her. Wife relied on this representation by Husband to transfer the Stonecreek Property. Husband failed to fulfill this agreement; he never transferred any portion of his assets to her. The trial court stated that on November 24, 2004, when the deed was executed, the value of the Stonecreek Property was between 1.4 and 1.7 million dollars. The encumbrance at the time was between $900,000 and $950,000. Husband committed fraud by inducing Wife to give him the one-half interest in the Stonecreek Property but then failing to give her the one-half interest in his other properties. "The Stonecreek Property was never a community property asset and based on [Husband]'s fraud, the transfer is void and rescinded and is awarded to [Wife] as her sole and separate property."[5] (All caps. omitted.)

As for the RLB loan, the trial court first noted that the parties agreed to refinance the Washington Mutual loan encumbering the Stonecreek Property in late 2006. Husband enlisted the help of Freiseisen. Husband secured the RLB loan on December

[5] There is clearly a typo in the Statement of Decision as it states "Petitioner" but clearly the intent was to give Wife the Stonecreek Property. Later in the decision the trial court confirms the Stonecreek Property would be granted to Wife as her sole property.

15, 2006. Although Wife agreed in "principle" to the refinance, she did not approve the RLB loan or sign any document agreeing to the RLB loan. No loan application was filled out by Wife. The loan document was in German. No promissory note or deed of trust was filed against the Stonecreek Property. On December 19, 2006, Freiseisen effectuated a wire transfer of funds to Washington Mutual in an amount to pay off the loan.

Wife was aware that the Washington Mutual loan was paid off. The trial court noted, "Notwithstanding [Wife]'s lack of knowledge or consent to this specific RLB loan when it was obtained, to the extent that the loan is valid, it is nonetheless a community property debt as it was incurred during the marriage and there is no evidence that the loan did not benefit [Wife] notwithstanding [Husband]'s act in signing the letter on her behalf. (*California Family Code* § 910)."[6] (All caps. omitted.) The trial court further found, "The Court does not make any finding concerning whether or not the RLB loan is a secured lien on the property because the same is unnecessary to the Court's determination of liability as between the parties and the Bank has not been joined as a party." The loan document itself stated it was enforceable under Austrian law. The trial court concluded, "Each party is assigned as his/her sole and separate property any liability for 50% of the balance of the RLB LOAN, to the extent any liability exists."

[6] Section 910 provides in pertinent part, "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt."

Judgment for dissolution of marriage was filed on December 8, 2016. Wife was given the Stonecreek Property as her sole and separate property. Notice of entry of judgment was filed on December 23, 2016. On January 13, 2017, the trial court ordered that Husband sign a quitclaim deed to Wife for the Stonecreek Property.

F. MOTION FOR NEW TRIAL

Husband filed a motion for new trial on January 5, 2017. Husband contended that the trial court erred by finding that he had no interest in the Stonecreek Property. Husband's counsel submitted a declaration in support of the motion for new trial. In the declaration, Husband's counsel declared that the trial testimony provided the RLB loan was taken out for the benefit of both parties. It was used to pay off the mortgage on the Stonecreek Property. Husband's counsel declared, "The court found that the debt to RLB was community in nature and that it was used for [Wife]'s benefit when it repaid her separate property mortgage." He additionally stated, "Using [Wife]'s value of the Chino Hills property results in the Community acquiring an approximate interest of 59% to 67% in the Chino Hills property under the principles established in [*Moore/Marsden*]."

In the points and authorities, Husband insisted the trial court found that the RLB loan was community debt and that each party was obligated to pay one-half of the debt. Husband objected to the trial court's decision insisting the court should find that he had a pro tanto interest in the Stonecreek Property. Husband argued, "The Court's decision is that each party is liable for one-half the debt to RLB. By awarding [Wife] the Chino Hills property debt free, it unjustly enriched her with a benefit of approximately $900,000 in additional equity in the property." Wife had a mortgage of over $900,000 at the

beginning of the marriage but now only owed $450,000. Husband received no interest in the Stonecreek Property but owed $450,000 in payments.

On January 13, 2017, Wife filed a reply to the motion for new trial. A brief hearing was held on February 6, 2017. The trial court had the parties address whether the motion for new trial was timely. They did not argue the merits. The matter was taken under submission. On February 10, 2017, the trial court provided a written denial of the motion for new trial without explanation of its ruling. Husband filed his notice of appeal from the judgment on February 16, 2017.

DISCUSSION

Husband contends that by obtaining the RLB loan and paying off the Washington Mutual loan during the marriage, the trial court should have found the community acquired an interest of between 55 and 67 percent in the Stonecreek Property under *Moore/Marsden*. The trial court abused its discretion by refusing to consider the issue and award him his pro tanto interest. Reversal is required in order for the trial court to consider the appropriate amount of the *Moore/Marsden* community interest and Husband's portion. We conclude Husband failed to properly raise the theory in the trial court; and, even if the trial court had wanted to calculate the *Moore/Marsden* interest, Husband failed to meet his burden of presenting evidence of the proper calculation.

"When community property is used to reduce the principal balance of a mortgage on one spouse's separate property, the community acquires a pro tanto interest in the property. [Citation.] This well-established principle is known as 'the *Moore/Marsden* rule.' " (*Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1421-1422.) The *Moore/Marsden*

rule has been applied where the parties refinanced a separate residential mortgage during marriage to pay off an existing loan. (*Id.* at p. 1422; *In re Marriage of Branco* (1996) 47 Cal.App.4th 1621, 1625-1629 (*Branco*).)

"In [*Moore*], the wife purchased a house eight months before the marriage with a down payment and loan for the balance, took title in her name as a single woman, and made payments on the loan that slightly reduced its principal. During the marriage the parties made loan payments with community property funds. Upon dissolution, the community was given ' "a pro tanto community property interest in such property in the ratio that the payments on the purchase price with community funds bear to the payments made with separate funds." ' [Citation.] Thus, in order to determine the separate property interest in the property, the court divided the separate property contributions (down payment and loan amount minus amount by which community property payments reduced principal balance of loan) by the purchase price of the property; to determine the community property interest, the court divided the amount by which community property payments reduced the principal by the purchase price. [Citation.] The community and separate property percentages were then multiplied by the total appreciation of the property during marriage to calculate the respective financial interests." (*Branco*, *supra*, 47 Cal.App.4th at p. 1626.)

"Following *Moore*, *Marsden* calculated the separate property interest as the purchase price less the amount by which the community payments had reduced the principal of the loan, divided by the purchase price of the home; the community interest was calculated by dividing the amount by which community payments had reduced the

loan principal by the purchase price. These percentages (75.98 percent separate property and 24.02 percent community property) were then multiplied by the appreciation of the property during the marriage. The husband's total separate property interest consisted of the down payment, loan payments made before the marriage and after separation, the appreciation of the property before the marriage, 75.98 percent of the appreciation of the property during the marriage, and half of 24.02 percent community share of the appreciation during the marriage. The wife's share of the community property interest was one-half of the sum of the amount of community payments reducing the loan principal plus the 24.02 percent community share of the appreciation during marriage." (*Branco*, *supra*, 47 Cal.App.4th at pp. 1626-1627.)

After *Moore/Marsden* the court in *Branco* considered the community interest when a new loan was obtained during marriage to pay off an existing loan. In *Branco*, wife owned her home prior to her marriage to husband. Once they were married, they refinanced the loan on the home and paid off the original mortgage. (*Branco*, *supra*, 47 Cal.App.4th at p. 1623.) Like the case here, the parties, "paid off the original mortgage in full with proceeds from a community property loan." (*Id.* at p. 1627.) The court found that *Moore/Marsden* interest was applicable. It set forth how the pro tanto interest would be calculated as follows: "[T]he community property interest in the home would be computed by dividing the community's contribution to the purchase price of the home (payments reducing principal made with community funds on the original loan, if any, plus the principal balance of the loan paid off with proceeds of the [pay off] loan) *by the purchase price*. This percentage would then be multiplied by the *appreciation of the*

home during the years of the marriage. The husband was entitled to one half this amount as his share of the community interest. The wife was entitled to the other one-half of the community interest in the appreciation during marriage, as well as all the appreciation before the marriage and after separation, the down payment and payments reducing principal on the original loan made before the marriage." (*Id.*, at p. 1629, italics added)

Here, during trial and during argument after trial, Husband never suggested that the trial court conduct a *Moore/Marsden* calculation. In fact, during argument Husband specifically declined to have the trial court calculate the *Moore/Marsden* interest: "I'm not saying do the *Moore/Marsden* calculation. . . . [¶] . . . [¶] . . . That will even complicate this even beyond . . . ." Only after the trial court determined that the transfer deed giving him one-half interest in the Stonecreek Property was invalid did Husband finally argue the trial court must apply the *Moore/Marsden* calculation. Husband cannot remain silent throughout trial regarding his theory of recovery and then raise the issue for the first time after receiving the trial court's proposed statement of decision. " ' "As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried. . . . [I]t would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal." ' " (*In re Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 695.) This equally applies to the application of a theory after receiving the trial court's tentative decision. Although there was brief mention of the theory prior to trial, no evidence was presented in order to assist the trial court in making the

calculation and Husband specifically advised the trial court prior to the issuance of its proposed tentative decision it need not involve itself in such a complicated calculation.

Moreover, even if the trial court was properly apprised of the theory, there was insufficient evidence presented to support the calculation of such interest. In his appellant's opening brief, Husband conceded that the evidence supporting the calculation did not appear in the record. "There was no testimony as to the purchase price or the appreciation of the property value." Husband insisted the value at the time of the deed was between 1.4 and 1.7 million dollars and Washington Mutual loan was $942,585.73 when it was paid off. Husband then concluded that under *Branco*, the community acquired an interest of between 55 and 67 percent.

Husband bore the burden of presenting evidence of his pro tanto interest in the Stonecreek Property. (See *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1289; *In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1556-1557 [in order to apply a *Moore/Marsden* calculation, sufficient supporting evidence must be presented].) There is no dispute that the purchase price and appreciation are unknown. Further, other amounts applied in *Branco*, such as the down payment, were not in evidence here. (*Branco, supra*, 47 Cal.App.4th at p. 1629.) It is Husband's burden to show reversible error. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 766.) We cannot find the trial court abused its discretion by not calculating *Moore/Marsden* interest when it was belatedly raised by Husband and there was not sufficient evidence presented by Husband to support the calculation.

Husband provides, for the first time in the reply brief, that the record *does* support that the trial court could make a *Moore/Marsden* calculation upon remand. He reiterates that the trial court found that the value of the Stonecreek Property at the time of the transfer deed was between 1.4 and 1.7 million dollars. The encumbrance was *approximately* $900,000 to $950,000. The RLB loan paid off the Washington Mutual loan. He then provides the calculation: "The community property interest in the home should be computed by dividing the community's contribution to the purchase price of the home (here this would be the principal balance of the loan paid off with community loan proceeds) by the purchase price (here the pre-marriage value of the property can be substituted). This percentage is then applied to the appreciation of the home during the years of the marriage."

There is no evidence pointed to by Husband as to the purchase price of the home, and under *Branco* we cannot substitute the pre-marriage value. Husband does not provide any authority that this court could apply the "pre-marriage" value of the home as the purchase price. Further, there is absolutely no evidence as to the appreciation of the home during the marriage. Husband had the burden of presenting these facts to support the *Moore/Marsden* calculation. His failure to do so forecloses any relief on appeal.

DISPOSITION

The judgment is affirmed in full. Wife is awarded her costs on appeal as the prevailing party.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.